

**CONSUMER LITIGATION LAW CENTER, APC**

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MARTHA ALVAREZ, an individual,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,  
successor by merger to WELLS  
FARGO BANK SOUTHWEST, N.A.  
f/k/a WACHOVIA MORTGAGE, FSB  
f/k/a WORLD SAVINGS BANK, FSB;  
CAL-WESTERN RECONVEYANCE  
CORPORATION, a California  
Corporation; and all persons or entities  
unknown claiming any legal or  
equitable right, title, estate, lien or  
interest in the property described in this  
complaint adverse to Plaintiff's title  
thereto, and DOES 1 through 25,  
inclusive,

Defendants.

CASE NO: 2:12-cv-09661-PA (RZx)

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT; MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT THEREOF**

**Hearing Date:**

**Date: January 21, 2013**

**Time: 1:30 p.m.**

**Judge: Hon. Percy Anderson**

**Ctrm: 15**

1 Plaintiff, MARTHA ALVAREZ, herein submits her opposition to Defendant  
2 WELLS FARGO BANK, N.A., successor by merger to WELLS FARGO BANK  
3 SOUTHWEST, N.A., f/k/a WACHOVIA MORTGAGE, FSB f/k/a WORLD  
4 SAVINGS BANK, FSB'S ("WELLS FARGO") motion to dismiss her first  
5 amended complaint ("FAC"). Plaintiff opposes Defendant's motion to dismiss on  
6 the grounds that her FAC does state valid causes of action and that Defendant's  
7 motion to dismiss is without merit.

8 The opposition shall be based on this opposition, the attached memorandum  
9 of points and authorities, on the complete files and records of this action and on  
10 such other oral and/or documentary evidence as may be presented at the hearing on  
11 the motion.

12  
13 Dated: January 7, 2013

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14  
15  
16 BY: /s/ September J. Katje  
17 September Katje  
18 Attorney for Plaintiff,  
19 Martha Alvarez  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### 1. INTRODUCTION

On December 7, 2012, Plaintiff filed a first amended complaint (“FAC”) after considering Defendant’s motion to dismiss. Defendant has nevertheless filed another motion to dismiss in response.

### 2. STATEMENT OF FACTS

Plaintiff is the owner of the real property located at 19825 Sunset Vista Road, Walnut, CA 91789. (“Subject Property”). (FAC ¶ 3.) On January 2, 2008, Plaintiff obtained an adjustable rate mortgage for the principal sum of \$860,000.00 from WORLD SAVINGS secured by a deed of trust. (FAC ¶¶ 15, 19.) The deed of trust was recorded against the Subject Property as instrument no. 2008-0002822. (FAC ¶ 19.)

Plaintiff sought a 30-year fixed-rate mortgage loan. (FAC ¶ 15.) The Agent represented that Plaintiff would receive a 30-year fixed-rate mortgage loan. (FAC ¶ 15.) Plaintiff was unaware and the Agent did not disclose that the loan had a finance charge of \$1,665,027.56 and the principal balance of the loan would increase dramatically. (FAC ¶ 16.)

As a result of the unknown and onerous loan terms, Plaintiff was inevitably forced to seek a loan modification. (FAC ¶ 17.) Plaintiff contacted WACHOVIA to inquire about loan workout options and was directed to submit a loan modification application. (FAC ¶ 17.) Plaintiff submitted a loan modification on six separate occasions and was denied on each occasion, not receiving a material reason for her denials. (FAC ¶ 17.) WELLS has since recorded a notice of default and notice of trustee’s sale and a sale date of the property is now pending. (FAC ¶ 18.)

Plaintiff’s loan is a Pick-a-Payment loan that is among those that have been the subject of an ongoing investigation by the California Department of Justice to determine if they violated California law, including sections 17200 and 17500 of

1 the California Business and Professions Code. (FAC ¶ 20.) WELLS FARGO  
 2 recognized the harm of these loans and accepted responsibility for them and  
 3 entered into a settlement agreement with the California Attorney General's Office.  
 4 (FAC ¶ 20.) As stated herein, WELLS FARGO has ignored its obligations under  
 5 the terms of this settlement and continues to move forward with the trustee's sale  
 6 of Plaintiff's property. (FAC ¶ 20.)

### 7 **3. PLAINTIFF'S CLAIMS ARE NOT PREEMPTED BY HOLA**

8 Defendant contends that Plaintiff's claims are preempted by the Home  
 9 Owners Loan Act ("HOLA"). HOLA however, is not as expansive as Defendant  
 10 contends. State laws that are not preempted by HOLA include those that only  
 11 incidentally affect the lending operations of federal savings associations or are  
 12 otherwise consistent with the occupation of the field of federal savings  
 13 associations, including contract law, real property law, tort law, and laws that  
 14 further a vital state interest. 12 C.F.R. § 560.2(c).

15 First, Defendant contends that Plaintiff's claims stemming from the loan  
 16 origination are barred by HOLA, primarily because they fall under terms of credit,  
 17 the lenders disclosure and advertising, and the origination of the loan. However,  
 18 fraud and UCL claims are governed almost exclusively by state law and do not  
 19 raise issues of great federal interest. *McKell v. Washington Mut., Inc.*, 142 Cal.  
 20 App. 4th 1457, 1487 (2006). There is no reason to suppose that Congress intended  
 21 to preempt common law tort claims, effectively granting banks immunity from  
 22 such state law claims. *Id.* Further, a plaintiff's ability to sue the bank for fraud  
 23 does not interfere with what the bank may do, it simply insists that a bank cannot  
 24 misrepresent how it operates or utilize fraudulent methods in its operations. *Id.*  
 25 Laws of general applicability that do not directly affect a national bank's lending is  
 26 not preempted by HOLA. *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d  
 27 1119, 1127 (N.D. Cal. 2010).

28 ///

Second, Defendant contends that Plaintiff's claim for unfair and deceptive business practices in the loan servicing is preempted by HOLA as it encompasses claims based on the processing or servicing of a loan. UCL claims are governed almost exclusively by state law and do not raise issue of great federal interest and there is no reason to suppose that Congress intended to preempt common law tort claims. *McKell*, 142 Cal. App. 4th at 1457. Plaintiff's claims under the UCL are based on contract, tort, and laws furthering a vital state interest. *See* 12 C.F.R. §561.2(c). Such laws are not preempted if they only incidentally affect lending. *Id.* "Courts have...interpreted *Silvas* to not preempt all state law causes of action arising out of loan modification and/or foreclosure proceedings, but only those that impose new requirements on the lender." *Rumbaua v. Wells Fargo Bank, N.A.*, No. C 11-1998 SC, 2011 WL 3740828, at 7 (N.D. Cal. Aug. 25, 2011). Where Plaintiff's claims have centered on a bank's failure to make "adequate disclosure of fees, interest rates, or other loan terms," or "inadequate notice of various rights and procedures during the foreclosure process," those claims have been preempted because they "would effectively impose requirements that banks include specific information in loan documents or provide specific notices during foreclosure." *See DeLeon v. Wells Fargo Bank, N.A.*, No. 10-CV-01390-LHK, 2011 WL 311376, at 6 (N.D. Cal. Jan. 28, 2011). But a claim is not preempted where plaintiffs challenge "defendant's general conduct of stalling [and] avoiding his requests..., not the substance of its lending practices such as terms of credit, disclosures, or advertising," because the state-law claims would only incidentally affecting lending operations. *Avila v. Wells Fargo Bank*, No. C 12-01237 WHA, 2012 WL 295117, at 11 (N.D. Cal. July 19, 2012).

Third, Defendant contends that Plaintiff's claim for unfair and deceptive business practices in failing to follow foreclosure procedures is preempted by HOLA as it encompasses the circumstances under which a loan may be called due and payable upon the passage of time or specific event external to the loan. (FAC



¶ 110.) As stated prior, UCL claims are governed by state law and do not raise issues of great federal interest. Additionally, foreclosure is a matter of real estate property law and real property law has traditionally been the exclusive domain of the states. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 541-42 (1993). Real property is one of the areas that state laws are not preempted by HOLA. 12 C.F.R. § 560.2(c).

#### **4. PLAINTIFF STATED A CLAIM FOR FRAUD.**

##### **A. Plaintiff's Fraud Claim is Timely.**

The statutory bar for fraud is three years. Cal. Code Civ. Proc. § 338(d). The cause of action, though, is not deemed to have accrued until the discovery of the facts constituting the fraud by the aggrieved party. *Id.* As a result of the compounding half-truths, misrepresentations, omissions, and Defendant's failure to provide the loan documents in a timely fashion, Plaintiff was not aware of the actual loan terms and Defendant's fraudulent actions.

In *Boschma v. Home Loan Center, Inc.*, 198 Cal.App.4th 230, 249 (2011), the court determined that the plaintiffs had adequately pled that the material facts were concealed by inaccurate representations and half-truths. Further, the court determined that a fraud claim may be established by showing that the defendant intentionally used its forms to deceive borrowers by hiding the actual interest rates and monthly payments sufficient to amortize the loan in the complexity of the contract terms. *Id.* The court reasoned that "[t]he fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." *Id.*

Similarly here, the complexity of the loan documents concealed the loan terms from Plaintiff. As a result, Plaintiff was only able to discover the acts committed herein upon notice of the substantial increase in the principal amount of the loan from the original amount of \$860,000.00 to \$951,811.38 on November 5, 2009 when receiving the notice of trustee's sale. (FAC ¶ 66.) Plaintiff had no

1 knowledge of the negative amortization component of the loan and had no way of  
 2 discovering the undisclosed loan terms prior because there was no event sufficient  
 3 to put her on reasonable notice. (FAC ¶ 66.)

4 **B. Defendant Misrepresented the Terms of the Loan.**

5 Under California law, the indispensable elements of a fraud claim include a  
 6 false representation, knowledge of its falsity, intent to defraud, justifiable reliance,  
 7 and damages. *Hackethal v. Nat'l Cas. Co.*, 189 Cal. App. 3d 1102, 1111 (1987).  
 8 Less specificity is required when it appears from the allegations that the defendant  
 9 possesses full information concerning the facts of the controversy. *Committee on*  
 10 *Children's Television, Inc. v. General Foods Corps.*, 35 Cal. 3d 197, 217 (1983).

11 Upon initiating the loan application process, Plaintiff specifically requested  
 12 a 30-year fixed-rate loan. (FAC ¶ 67.) The Agent, a World Savings employee  
 13 trained and coached by World Savings on how to sale these profitable loans do  
 14 unknowing mortgage seekers, assured Plaintiff that she qualified for and would  
 15 receive a 30-year fixed-rate loan. (FAC ¶¶ 15, 67.) The Agent filled out the loan  
 16 application over the phone and did not ask Plaintiff what her income was or to  
 17 provide any verification of her income. (FAC ¶ 68.) Plaintiff was then not  
 18 provided the loan documents until after the loan was signed and recorded. (FAC ¶  
 19 70.)

20 The complexity of the loan documents effectively concealed the terms of the  
 21 loan and Defendant had superior knowledge of this fact, as well as knowledge of  
 22 the onerous terms themselves. Defendant misrepresented the actual terms of the  
 23 loan and then failed to disclose them, including the loan had an annual percentage  
 24 rate of 7.703%, a finance charge of \$1,665,027.56, and there would be a substantial  
 25 increase in the principal of the loan. As in *Boschma*, Plaintiff's claim should  
 26 survive the initial pleading stage.

27 ///

28 ///

1 **5. PLAINTIFF STATED A CLAIM FOR BREACH OF THE IMPLIED**  
 2 **COVENANT**

3 “Every contract imposes upon each party a duty of good faith and fair  
 4 dealing in its performance and its enforcement.” Res.2d Contracts, § 205. The  
 5 “[i]mplied promise requires each contracting party to refrain from doing anything  
 6 to injure the rights of the other to receive the benefits of the agreement. . . .”  
 7 *Howard v. American Nat. Fire Ins. Co.*, 187 Cal. App. 4th 498, 524 (2010).

8 Plaintiff contacted WELLS FARGO in December 2009 to inquire about loan  
 9 workout options. (FAC ¶ 81.) WELLS FARGO advised Plaintiff to submit a loan  
 10 modification application. (FAC ¶ 81.) Plaintiff submitted a loan modification  
 11 application and all the required documents. (FAC ¶ 81.) WELLS FARGO denied  
 12 Plaintiff for a loan modification without providing a particular reason for her  
 13 denial. (FAC ¶ 81.) By June 2010, Plaintiff had submitted three separate loan  
 14 modification applications and all the required documents and was denied on each  
 15 occasion. (FAC ¶ 81.)

16 Plaintiff is informed and believes, and thereon alleges that she has applied  
 17 for a loan modification on six separate occasions and been denied on each  
 18 occasion. (FAC ¶ 81.) Plaintiff’s attempts to obtain a loan modification were  
 19 characterized by receiving multiple letters from WELLS FARGO seeking  
 20 documentation that Plaintiff had already submitted to which Plaintiff complied  
 21 with, and WELLS FARGO’S delays in providing Plaintiff with a final  
 22 determination on her modification applications. (FAC ¶ 81.) Plaintiff has  
 23 persistently attempted to fulfill all of her obligations under the agreement with  
 24 WELLS FARGO, but Defendant intentionally thwarted these efforts by refusing to  
 25 legitimately review Plaintiff’s loan modification applications. (FAC ¶ 84.)  
 26 Defendant thereby wrongfully prevented Plaintiff from receiving the benefits of  
 27 the loan agreement. (FAC ¶ 84.)

28 ///

1 **6. PLAINTIFF STATED CLAIMS FOR VIOLATION OF BUSINESS**  
 2 **AND PROFESSIONS CODE §§ 17200, ET SEQ.**

3 Unfair Competition Law (“UCL”) defines “unfair competition” to include  
 4 “any unlawful, unfair, or fraudulent business act or practice.” *Cel-Tech Comm.,*  
 5 *Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). The UCL  
 6 covers a wide range of conduct. *Korea Supply Co. V. Lockheed Martin Corp.*, 29  
 7 Cal. 4th 1134, 1143 (2003).

8 **A. The Claims are Not Preempted**

9 As stated in section 3, *surpa*, Plaintiff’s claims are not preempted.

10 **B. Plaintiff Stated Claims for Violation of Business and Professions**  
 11 **Code 17200 with Particularity**

12 **1. Violation During the Loan Origination**

13 UCL incorporates other laws and treats violations of them as unlawful  
 14 practices independently actionable; a violation of almost any law may serve as a  
 15 basis for a UCL claim. *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 838-39  
 16 (1994). The acts of Defendant during the loan origination are in violation of  
 17 California Civil Code section 1572 (actual fraud), as Defendant assured Plaintiff  
 18 that she qualified for and would receive a 30-year fixed-rate mortgage and this  
 19 assurance was designed to, and did in fact, induce Plaintiff to enter into a loan that  
 20 was prejudicial to her financial situation and set her up for certain default so that  
 21 Defendant could then profit. (FAC ¶¶ 26-27.)

22 “[A]n unfair business practice occurs when it offends an established public  
 23 policy or when the practice is immoral, unethical, oppressive, unscrupulous or  
 24 substantially injurious to the consumer.” *People v. Casa Blanca Convalescent*  
 25 *Homes Inc.*, 195 Cal. App. 3d 509, 530 (1984). Defendant’s misrepresentations to  
 26 Plaintiff before she entered into the subject Pick-a-Payment loan were and are  
 27 directly contrary to established policies promoting the informed use of credit, e.g.,  
 28 the policies embodied in 15 U.S.C. § 1601 (“It is the purpose of this subchapter to

1 assure a meaningful disclosure of credit terms so that the consumer will be able to  
 2 compare more readily the various terms available to him and avoid the  
 3 uninformed use of credit.”). (FAC ¶ 28.) Defendant’s actions thereby (1) caused  
 4 substantial injury to Plaintiff, (2) had no countervailing benefit to consumers or to  
 5 competition that could possibly outweigh this substantial injury, and (3) caused  
 6 injury that could not have been avoided by Plaintiff because she trusted in  
 7 Defendant’s assurances and Defendant engaged in such conduct to conceal their  
 8 misrepresentations from Plaintiff. (FAC ¶ 29.)

9 The fraudulent prong in UCL prohibits any activity that is likely to deceive  
 10 members of the public. *Puentes v. Wells Fargo Home Mortgage, Inc.*, 160 Cal.  
 11 App. 4th 638, 645 (2008). Defendant engaged in fraudulent practices by assuring  
 12 Plaintiff during the loan application process that she would receive a 30-year  
 13 fixed-rate mortgage loan when Defendant had no intention of giving Plaintiff a  
 14 30-year fixed-rate mortgage loan. (FAC ¶ 32.) Defendant instead placed Plaintiff  
 15 in a toxic loan that would injure Plaintiff resulting in the foreclosure of her home,  
 16 wherein only Defendant would ultimately benefit and profit.

## 17 **2. Violation During the Loan Servicing**

18 To the extent a plaintiff alleges unfair business practices or acts that are not  
 19 fraudulent, those allegations need not satisfy Rule 9(b). *See Vess v. Ciba-Geigy*  
 20 *Corp.*, 317 F.3d 1097, 1103-04 (9th Cir. 2003). “While fraud is not a necessary  
 21 element of a claim under the CRLA and [Section 17200] . . . a plaintiff may allege  
 22 a unified course of fraudulent conduct and rely entirely on that course of conduct  
 23 as the basis of that claim.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th  
 24 Cir. 2009).

25 In the course of their conduct, management, and oversight of servicing  
 26 Plaintiff’s loan, Defendant engaged in a pattern of unfair and deceptive business  
 27 practices, specifically Defendant’s conduct, management, and oversight of  
 28 Plaintiff’s loan modification attempts. (FAC ¶ 42.) Plaintiff contacted WELLS

1 FARGO seeking a loan workout option in December 2009. (FAC ¶ 44.) WELLS  
 2 FARGO instructed Plaintiff to submit a loan modification application and Plaintiff  
 3 did so. (FAC ¶ 44.) WELLS FARGO denied Plaintiff for a loan modification and  
 4 did not provide a reason for the denial. (FAC ¶ 44.)

5 Plaintiff has applied for a loan modification on approximately six separate  
 6 occasions and denied each time without receiving a legitimate reason for the  
 7 denials. (FAC ¶ 45.) Throughout her attempts to obtain a loan modification  
 8 WELLS FARGO inundated Plaintiff with letters requesting information and stating  
 9 that Plaintiff needed to update her information and was missing documentation.  
 10 (FAC ¶ 46.) Plaintiff cooperated and submitted all requested documents,  
 11 nevertheless, WELLS FARGO continued to assert that Plaintiff was missing  
 12 documentation. (FAC ¶ 47.)

13 The failure and refusal of Defendant to seek alternatives to foreclosure and  
 14 to proceed to foreclose appears to be part of a company policy of seeking to deny  
 15 contractual and stipulated benefits to Plaintiff despite the existence of a duty to  
 16 offer such relief in good faith under California law. (FAC ¶ 51.)

### 17 **3. Violation During the Foreclosure Process**

18 Defendant's actions in pursuing foreclosure were deceptive and fraudulent in  
 19 that they were based on the furtherance of illegal acts done at the time of the loan's  
 20 origination. (FAC ¶ 59.) On or about July 30, 2009, WELLS FARGO through its  
 21 trustee CAL-WESTERN recorded a notice of default on the subject property.  
 22 (FAC ¶ 60.) Defendants then proceeded to record a notice of trustee's sale on  
 23 November 5, 2009, May 6, 2011 and May 21, 2012. (FAC ¶ 60.) Defendants'  
 24 conduct violated public policy embodied in California Civil Code section 2923.6  
 25 by failing to offer the borrower a loan modification or workout plan consistent with  
 26 its contractual or other authority. (FAC ¶ 62.)

### 27 **C. The First Cause of Action is Not Time-Barred**

28 As stated in section 3., *surpa*, Plaintiff's claim is not time-barred.



## 7. PLAINTIFF'S CLAIMS FOR EQUITABLE RELIEF

### A. Plaintiff Should Not Be Required to Allege Tender

There are recognized exceptions to the tender requirement. Tender may not be required where the action attacks the validity of the underlying debt, since it would constitute an affirmation of the debt. *Onofrio v. Rice*, 55 Cal. App. 4th 413, 424 (1997). Plaintiff's first claim alleges that this loan was procured by fraud. Plaintiff alleges numerous instances of misrepresentation and concealment in the origination of Plaintiff's loan, as discussed in 4.B. *supra*. Plaintiff's fraud claim attacks the validity of the underlying debt. In addition, Plaintiff's claims for Defendant's violation of Business and Professions Code sections 17200, et seq. in the origination of the loan attacks the validity of the underlying debt. As such, alleging tender would constitute an affirmation of the debt, and invalidate Plaintiff's allegations in her FAC.

In addition, there is a general equitable exception that "tender may not be required where it would be inequitable to do so." *Onofrio*, 55 Cal. App. 4th at 424 (quoting 4 Miller & Starr, Cal. Real Estate (2d ed. 1989) Deeds of Trust & Mortgages § 9:154, p. 508-509, fn. 86.) Tender may not be required if it would evidence injustice and hardship of the right to attack the sale if it were made dependent upon an offer to pay the whole debt. *Humboldt Sav. Bank v. McCleverty*, 161 Cal. 285, 291 (1911). Here, it would be an injustice and hardship to require Plaintiff to tender the full loan amount of the loan in order to attack the sale. Plaintiff's claims stem from a loan that arose from fraud and as a result Plaintiff obtained a loan that she could not afford. It would be an injustice and hardship to then require Plaintiff to tender the full loan amount of that loan in order to attack the sale.

### B. Plaintiff Stated a Claim for Declaratory Relief

"In the case of actual controversy . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such

1 declaration.” 28 U.S.C. § 2201(a). An actual controversy exists if the facts  
 2 alleged, under the circumstances, show that there is a substantial controversy  
 3 between parties having adverse legal interests of immediacy and reality to warrant  
 4 the issuance of a declaratory judgment. *Maryland Cas. Co. v. Pacific*, 312 U.S.  
 5 270, 272 (1941).

6 An actual controversy has arisen and now exists between Plaintiff and  
 7 Defendants concerning their respective rights and duties regarding the loan or the  
 8 foreclosure sale. (FAC ¶ 105.) These disputes concern the ownership rights and  
 9 the validity of the commencement of the foreclosure process. (FAC ¶ 106.)  
 10 Plaintiff contends that Defendants do not have the authority to foreclose upon and  
 11 sell the property and is informed and believes, and thereon alleges that Defendants  
 12 dispute this contention. (FAC ¶¶ 107-08.) As a result of the wrongful and  
 13 unlawful foreclosure actions taken by Defendants, Plaintiff will sustain great and  
 14 irreparable injury through the loss of her property. (FAC ¶ 110.)

### 15 **C. Plaintiff Stated a Claim for Quiet Title**

16 An action for quiet title requires (1) a description of the property, (2) the title  
 17 which the plaintiff seeks and the basis of the title, (3) the adverse claims to the title  
 18 against which the plaintiff seeks a determination sought, (4) the date of which the  
 19 determination is sought; (5) the prayer for the determination of the title which  
 20 plaintiff seeks. Cal. Code Civ. Proc. § 761.010.

21 Plaintiff seeks to quiet title of the property known as 19825 Sunset Vista  
 22 Road, Walnut, CA 91789. (FAC ¶ 97.) Plaintiff seeks to quiet title as of July 30,  
 23 2009, the date the notice of default was recorded. (FAC ¶ 98.) Plaintiff seeks a  
 24 judicial declaration that the title to the subject property is vested in Plaintiff alone  
 25 as the title owner. (FAC ¶ 100.) Defendants do not have any legal ownership or  
 26 interest in the subject property obtained through fraud and wrongful conduct, and  
 27 failure to adhere to the strict statutory requirements to effectuate a foreclosure  
 28



1 proceeding of the subject property, thus voiding the foreclosure proceedings.  
 2 (FAC ¶ 101.)

3 **D. Each Equitable Claim has a Basis for Granting Relief**

4 Each equitable claim is based on the allegations of prior claims. As  
 5 demonstrated elsewhere in this brief, those claims state a basis for relief.

6 **8. CONCLUSION**

7 For the reasons set forth above, Plaintiff respectfully requests that the Court  
 8 deny Defendant's motion to dismiss. In the alternative, Plaintiff requests that the  
 9 Court allow her leave to amend the complaint to allege additional facts sufficient to  
 10 plead any inadequately pled causes of action.

11  
 12 Dated: January 7, 2013

CONSUMER LITIGATION  
 LAW CENTER, APC

13  
 14  
 15 BY: /s/ September J. Katje

16 September Katje  
 17 Attorney for Plaintiff,  
 18 Martha Alvarez  
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